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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 790,

Plaintiff,

v.

JOSEPH P. NORELLI, Individually, and in his  
capacity as REGIONAL DIRECTOR, NATIONAL  
LABOR RELATIONS BOARD, REGION 20; *et al.*,

Defendants.

CASE NO. 3:07-cv-2766 PJH

**PROSPECTIVE DEFENDANT-  
INTERVENOR'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

**HEARING DATE:  
TIME:  
COURTROOM OF**

Plaintiff Service Employees International Union, Local 790 ("Local 790") has filed for a Temporary Restraining Order ("TRO"). Docket Nos. 28-31. Prospective Defendant-Intervenor Stephen J. Burke, Jr. ("Burke") hereby opposes that Motion. In so doing, Burke adopts the Memorandum in Opposition filed by Defendants. Docket No. 32. Burke will not reiterate those points, so as not to further burden the Court regarding Local 790's frivolous and wasteful Motion for a TRO. As Burke and Defendants have demonstrated in their prior filings (Docket Nos. 14, 17, 22, and 26), no TRO or preliminary injunction is warranted in this case because this Court has no jurisdiction, and the only thing left for the Court to do is dismiss the case with prejudice.

1           However, Burke does have something new and additional to say, and will address two of Local  
2 790's specific claims: (1) that Local 790 (or some stranger SEIU local union) will suffer "irreparable  
3 injury" if it has to run an election campaign to oppose the deauthorization election that Burke has  
4 sought; and (2) that Local 790's interest in stopping the election takes precedence over Burke's interest  
5 or the public interest in conducting the election.

6  
7           **A.       Local 790 (Or Some Stranger SEIU Local) Is Suffering No Irreparable Injury.**

8           The notion that running an election campaign in an NLRB-sanctioned secret ballot election  
9 could ever serve as "irreparable injury" is absurd. Indeed, the union's arguments and declarations in  
10 support prove precisely that this case is "all about money" for Local 790, nothing more. Burke and his  
11 fellow employees have money, in the form of compelled dues that the union is now contractually  
12 entitled to extract. Burke and his supporters are seeking *via* the deauthorization election to stop that  
13 flow of compulsory dues money, as expressly permitted by 29 U.S.C. § 159(e). Local 790 wants that  
14 compelled money, and will stop at virtually nothing to get it, including filing frivolous lawsuits to  
15 interfere with a duly-authorized NLRB election. That is the sum and substance of this case from Local  
16 790's point of view, and that is what Local 790's request for a TRO is all about. Local 790's litigious  
17 fight to continue its compelled dues stream is the antithesis of "irreparable injury." No matter how  
18 much high-minded rhetoric Local 790 may employ to make this case sound like a major clash of legal  
19 principles, for Local 790 it is just about the dues money, nothing more.

20           Attached hereto as Exhibit A is the Declaration of Stephen J. Burke, Jr. In it, Burke describes  
21 how he and his supporters have been seeking this deauthorization election — as is their right under 29  
22 U.S.C. § 159(e) — for over one and one-half years. During that entire period, Local 790 has opposed  
23 them, hired lawyers to fight their appeal to the NLRB, and, more importantly, campaigned against  
24 them among the workers at Covenant Aviation Security. Attached to Burke's Declaration are flyers  
25 that the union has circulated among the employees. Some of those flyers were circulated over a year  
26 ago, and some are more recent. The notion that Local 790 (or some stranger local union) will now  
27 suffer irreparable injury if it must print and distribute more flyers like these would be laughable if it  
28 were not pitiful. Local 790 has already been campaigning against this deauthorization election for over

1 one and one-half years, so why is there now a sudden burst of “irreparable injury”? The answer is,  
 2 presumably, that Local 790 fears that it will lose the deauthorization election and that its compulsory  
 3 dues stream will end. But the mere loss of money is the antithesis of “irreparable injury.”

4 Would an employer be allowed to argue that it was “irreparably injured” by having to divert its  
 5 resources and capital to campaign against union certification? That it was too busy running its  
 6 business or negotiating contracts with overseas customers to have to be bothered with running an  
 7 election campaign under the NLRA? Such notions are preposterous, as is Local 790’s claim that  
 8 having to run an election campaign for a few weeks until the election is concluded is “irreparable  
 9 injury.”

10  
 11 **B. Burke And His Supporters Are Suffering Direct Injury Every Day Their Election**  
 12 **Is Delayed.**

13 Burke’s declaration demonstrates the difficulties that Burke and his co-workers face in  
 14 communicating with each other, because they work at San Francisco International Airport as security  
 15 screeners, in a 900-employee bargaining unit. These employees work in “24/7” shifts at all different  
 16 locations around the airport, and many never see each other because they work on different shifts and  
 17 different schedules. It has been a logistical nightmare for them to collect signatures, run a campaign,  
 18 and communicate with each other about the time and place of the impending deauthorization election.  
 19 Every time there is a delay, or a new time and place for the election to occur, they must attempt to  
 20 distribute new flyers and spread the word to employees in a widely dispersed bargaining unit. This is  
 21 an administrative nightmare for them. Thus, each additional delay is a huge burden on Burke and his  
 22 deauthorization supporters. But that is precisely what Local 790 seeks from this Court. Local 790  
 23 knows that these employees cannot readily communicate with each other, and it is using/abusing this  
 24 Court’s processes to further delay and disadvantage Burke and his co-workers as they try to run a  
 25 smooth and effective election campaign. This Court should recognize Burke’s interests, and the public  
 26 interests in NLRB secret-ballot elections, and refuse to serve as an assistant in Local 790’s scorched  
 27 earth campaign to halt the election.

28 Indeed, both the NLRB Regional Director and the Board have recognized the communication

difficulties faced by the employees in this diverse unit. In part, these very difficulties impelled the Board to allow the employees to begin collecting signatures for their “30% showing of interest” prior to the contract going into effect. *Covenant Aviation Security*, 349 NLRB No. 67 (30 March 2007), at 4-5. The NLRB recognized that it would take months for Burke and his supporters to effectively communicate with each employee in the unit. Thus, the stopping and starting of this election will only make it impossible for Burke and his supporters to communicate with their fellow employees about the time and place of the election, greatly hindering their rights to self-organization under Sections 7 and 9(e) of the NLRA, 29 U.S.C. §§ 157 and 159(e).

As of now, the mail ballot election is scheduled to go forward beginning in late June. Any delay by this Court will be a huge hindrance to Burke and his supporters as they try to run a fair campaign and communicate with their supporters. The Court must not condone Local 790’s dilatory and unfair tactics.

#### CONCLUSION

Wherefore, prospective Defendant-Intervenor Stephen J. Burke, Jr. asks this Court to summarily deny Local 790’s Motion for a Temporary Restraining Order.

DATED: 11 June 2007

Respectfully submitted,

/s/ W. James Young

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ATTORNEYS FOR DEFENDANT-INTERVENOR

**CERTIFICATE OF SERVICE**

I, W. James Young, counsel for Prospective Defendant-Intervenor, hereby certify that I electronically filed with the Clerk of Court the foregoing **Prospective Defendant-Intervenor's Motion to Dismiss Complaint; Joinder in NLRB Defendants' Motion to Dismiss Complaint**, using the CM/ECF system which will send notification of such filing to Defendants' counsel, this 11th day of June, 2007.

/s/ W. James Young

W. JAMES YOUNG

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Monday, 11 June 2007, 11:27:23 AM